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IN THE
COURT OF APPEALS OF INDIANA

JAMES E. SAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 39A01-0712-CR-574
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JEFFERSON CIRCUIT COURT
The Honorable Ted Todd, Judge
Cause No. 39C01-0607-FA-75

September 17, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant James E. Saylor appeals his convictions for two counts of Child Molesting,[1] a class A felony, Intimidation,[2] a class D felony, and Vicarious Sexual Gratification,[3] a class B felony. Saylor also admitted to being a Habitual Offender.[4] On appeal, Saylor raises the following arguments: (1) the trial court erroneously permitted the State to amend the charging information on the day the trial was scheduled to begin; (2) the trial court erred by admitting two photographs and certain testimony into evidence; and (3) the trial court committed fundamental error by admitting the victim's videotaped statement and certain testimony into evidence. Saylor also contends that the aggregate 138-year sentence imposed by the trial court was inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm.

FACTS

Saylor was released from the Indiana Department of Correction on April 12, 2005, having completed a sentence that was imposed following a probation violation.[5] Def. Ex. A; Appellant's App. p. 479. Following his release, he moved into a trailer in Madison with his wife, Jennifer Davis, and four children. B.D., who was ten years old at the time of Saylor's release, and M.D., who was thirteen years old at the time of Saylor's release, are Davis's children by a previous relationship. J.M.S. is Saylor's son by a previous

[1] Ind. Code § 35-42-4-3.

[2] Ind. Code § 35-45-2-1(b)(1)(A).

[3] I.C. § 35-42-4-5(b).

[4] Ind. Code § 35-50-2-8(a).

[5] The underlying convictions for which Saylor was on probation were operating a motor vehicle after lifetime forfeiture of driving privileges and operating a vehicle while intoxicated. Appellant's App. p. 479.

relationship and was approximately eighteen years old when Saylor was released. J.S., who was seven years old at the time of Saylor's release, is the only child born of Saylor's relationship with Davis.

Saylor was frequently alone with the children while Davis was at work, and he was often under the influence of alcohol while in charge of the children. Jasmin Mardello often visited the trailer because her boyfriend knew Saylor, and she developed a rapport with B.D. On July 24, 2006, while Mardello was visiting the trailer, B.D. told Mardello that she wanted to speak with her. They went into the bathroom, where B.D. acted "ashamed" and then burst into tears, saying, "[m]y dad's been doing things to me." Tr. p. 545-46. Mardello later recounted the ensuing conversation with B.D.:

> And I said . . . "I don't know [what happened] unless you tell me. What are you talking about?" And she [said], "You know." And I was like, "No, [B.D.] You know, I don't," and at this point she's almost in my lap crying, and . . . and . . . the best words as I can remember she said, "My dad's been having sex with me."

Id. at 546. B.D. told Mardello that the day before, after Davis had left for work, Saylor entered B.D.'s bedroom and, ignoring the child's resistance, "had sex with her." Id. B.D. told Mardello that there was "white stuff" when Saylor was finished and that M.D. and J.S. were in the room when this occurred. Id. at 548.

Mardello obtained Davis's and Saylor's consent for B.D. to stay overnight at her home, and upon reaching Mardello's home, B.D. repeated her allegations. She also told Mardello that Saylor had shown her pornographic movies and "made her suck on his dick and that white stuff came out" and that in another incident, "her dad was inside her." Id.

at 552, 555. B.D. said that the abuse was regular and that Saylor pressured her to say that she enjoyed it.

The following day, July 25, 2006, Mardello contacted the Department of Family and Children (DFC) to report the abuse. When B.D. was interviewed by DFC family caseworker Taryn Taylor later that day, B.D. told Taylor that Saylor's "ding dong" had made contact with her "pee pee," and that the last time this had occurred was on July 23, 2006. Id. at 782, 783-84. As a result of this interview, Saylor was arrested at his place of employment that same day.

On August 9, 2006, Taylor again interviewed B.D. after receiving a report from Saylor's neighbor that B.D. had said that she was forced to have sex with her brother, M.D. Tammy Vogelgesang, a social worker, also interviewed B.D. and M.D., and Kathy Scifres, a forensic nurse examiner, conducted a physical examination of B.D. at that time. B.D., M.D., and J.S. were subsequently removed from Davis's home and placed in foster care and group homes.

After some early amendments to the information, the State eventually charged Saylor as follows: Count I, class A felony child molesting, based on an allegation that he had performed sexual intercourse with B.D. on or about July 23, 2006; Count II, class A felony child molesting, based on an allegation that he had performed or submitted to deviate sexual conduct between December 18, 2004, and December 17, 2005; Count III, class D felony intimidation, based on an allegation that between December 18, 2004, and July 23, 2006, he had threatened to beat B.D. if she reported the abuse; Count IV, being a habitual offender; and Count V, class B felony vicarious sexual gratification, based on an

allegation that he had caused B.D. to engage in sexual intercourse with M.D. at some point in time between January 1, 2006, and July 25, 2006.

On August 23, 2007, after the jury had been empanelled but before they had been instructed or heard opening arguments, the trial court permitted the State to amend the information to correct an error regarding the dates of Saylor's offense as alleged in Count II. Specifically, Count II originally charged Saylor with child molesting between December 18, 2004, and December 17, 2005, and the amendment changed these dates to match those alleged in Count III—between December 18, 2004, and July 23, 2006. Saylor objected, arguing that he was prejudiced by the amendment, and the trial court overruled the objection. Saylor did not request a continuance of the trial.

At Saylor's trial, which began on August 23, 2007, Saylor presented a defense that he had never molested any of the children, emphasizing inconsistencies in B.D.'s allegations and highlighting her behavior apart from the incidents involving Saylor. B.D. testified at trial and described Saylor's actions in detail, explaining that he had struck her in the past and grounded her if she refused to comply, that if she began to cry when Saylor placed his penis in her vagina, he said, "[y]ou can take this," tr. p. 362, and that it happened regularly. B.D. also testified that Saylor had told her that her "pee pee . . . was big and it was better than your mom's." Id. at 364.

B.D. recounted another instance of molestation that occurred when she was eleven years old and M.D. was fourteen or fifteen years old. Saylor ordered them into his bedroom and told them to disrobe, and when B.D. refused, Saylor removed her clothes himself. Saylor directed the children onto the bed and instructed M.D. to penetrate B.D.,

and as that occurred, Saylor placed his penis into B.D.'s mouth. B.D. said that she complied because "I had no choice," explaining that Saylor "said that he could come after me if he got put in jail, and then after he . . . got done he would go after my family." Id. at 372. Saylor threatened to kill her family if she reported the abuse.

M.D. also testified, confirming the incident as described by B.D. He further testified that on at least a dozen other occasions, Saylor forced him to have intercourse with B.D. while Saylor watched and masturbated. M.D. stated that if he refused, Saylor would punch him in the head. Id. at 593. M.D. also testified that he had heard B.D. screaming while Saylor molested her on numerous occasions and that he had seen Saylor's penis being in contact with B.D.'s mouth and vagina because the abuse occurred in almost every room of the house, including the living room. Id. at 597.

Over Saylor's objection, forensic nurse examiner Scifres used two photographs of B.D.'s vagina to aid her testimony that B.D.'s vagina displayed a healed tear and hymenal thinning consistent with penetration by a blunt or round object such as a penis. A DVD of an interview of B.D. by a social worker was admitted into evidence and played for the jury with no objection from Saylor.

During Saylor's cross-examination of Mardello, he asked her if B.D. had reported having unnatural relations with a dog. Saylor also called Donna Combs, a neighbor of Saylor, who testified that while B.D. was playing at Combs's home, she allowed Combs's dog to mount her. After this testimony was presented, the State examined each witness about these incidents, eliciting further explanation that Saylor had taught B.D. to submit to sex with the family pit bull. Saylor did not object to the testimony.

The State called J.S. as a rebuttal witness after Saylor repeatedly sought to attack B.D.'s version of events. Saylor objected to the relevancy of the testimony and the State explained that it was calling J.S. because Saylor had denied molesting B.D. and M.D. and J.S. had witnessed some of the molestations. The trial court permitted J.S. to testify regarding what had transpired between Saylor, M.D., and B.D. J.S. testified that "I saw [B.D.], my sister, jack my dad off giving him practically a blow-job," id. at 862, that he saw Saylor order B.D. to fellate M.D. in the living room, and that one night Saylor entered the bedroom that J.S. shared with B.D. and told her to remove her clothes. When she refused, Saylor took her into the adjacent bedroom, after which, J.S. "heard the bed shaking." Id. at 868. J.S. was not asked about anything that might have occurred between him and Saylor.

On August 27, 2007, the jury found Saylor guilty of two counts of child molesting, intimidation, and vicarious sexual gratification. Subsequently, he admitted to being a habitual offender. At Saylor's October 4, 2007, sentencing hearing, the trial court found that Saylor's intimidation conviction merged into his conviction for vicarious sexual gratification. Following the hearing, the trial court found the following aggravating factors: (1) Saylor's extensive criminal history; (2) that Saylor committed the crimes in the presence of or within hearing of persons other than the victim who were under the age of eighteen; (3) Saylor violated a position of trust with the victims; (4) Saylor threatened to harm the victim or a witness if either person reported the abuse; and (5) B.D. was physically infirm and, because she had to undergo a liver transplant, has been unable to be treated with drugs that would otherwise ameliorate the post-traumatic stress she

suffers as a result of Saylor's crimes. The sole mitigator was that Saylor admitted to being a habitual offender. The trial court found that the aggravators "far outweigh" the mitigators, appellant's app. p. 408, and sentenced Saylor to forty-five years on each of the two class A felony child molesting convictions and to eighteen years on the class B felony vicarious sexual gratification conviction. The trial court added a thirty-year enhancement based on Saylor's status as a habitual offender, for an aggregate executed sentence of 138 years. Saylor now appeals.

DISCUSSION AND DECISION

I. Amendment of the Charging Information

Saylor first argues that the trial court erred by permitting the State to amend the charging information on the eve of trial and contends that a version of the relevant statute that is no longer in effect should govern our decision herein. Amendments to a charging information are governed by Indiana Code section 35-34-1-5. There is some dispute as to which version of the statute should apply, inasmuch as one version was in place when Saylor committed the crimes, that version was interpreted by our Supreme Court in a new way in Fajardo v. State, 859 N.E.2d 1201 (Ind. 2007), and the legislature subsequently revised the statute, effective May 8, 2007, before Saylor's trial commenced. See Ramon v. State, 888 N.E.2d 244, 250 (Ind. Ct. App. 2008) (explaining, in detail, the relevant history of Indiana Code section 35-34-1-5).

We need not decide what version of the statute applies herein, however, inasmuch as we find—explained more fully below—that the amendment to the charging information was an amendment of form, rather than substance, and on that issue, both

versions of the statute are the same. Our Supreme Court noted that the prior version of Indiana Code section 35-34-1-5(c) expressly permitted amendments "'in respect to any defect, imperfection, or omission in form'" at any time so long as the amendment "'does not prejudice the substantial rights of the defendant.'" Fajardo, 869 N.E.2d at 1207 n.11 (quoting I.C. § 35-34-1-5(c)) (emphasis in original). The revised statute contains an identical version of subsection (c). Thus, the State may make a formal amendment of the charging information at any time so long as the amendment does not prejudice the defendant's substantial rights.

As for the difference between form and substance, the Fajardo court held that "an amendment is one of form, not substance, if both (a) a defense under the original information would be equally available after the amendment, and (b) the accused's evidence would apply equally to the information in either form." 869 N.E.2d at 1207.

A panel of this court recently considered whether amending the charging information by altering the dates of the commission of the offense of child molesting was an amendment in form or substance. In Baber v. State, the defendant argued that the trial court erroneously permitted the State to amend the charging information during trial by changing the dates of the offenses in two of the charged child molesting counts "from between January 5, 2005 through January 14, 2005, to between August 2004 and January 17, 2005." 870 N.E.2d 486, 491 (Ind. Ct. App. 2007), trans. denied. The court found that the amendment was one of form because it is well established that time is not of the essence of child molesting, Barger v. State, 587 N.E.2d 1304, 1307 (Ind. 1992), and Baber's defense was that he did not commit the offenses. Thus, the "defense was

available to him both before and after the information was amended," and his evidence applied equally before and after the amendment. Baber, 870 N.E.2d at 492. Here, likewise, time was not of the essence of the crime and Saylor's defense was that he did not commit these crimes and that the children had fabricated the events. Thus, we find that the amendment of Count II was one of form, which could be made at any time so long as it did not prejudice Saylor's substantial rights.

We again observe that Saylor's primary defense—that he did not molest B.D. or M.D., both of whom were supposedly lying about his actions—was equally available before and after the amendment of Count II. Furthermore, his evidence suggesting that B.D. was lying because Saylor was incarcerated during the first four months of the time frame she gave for the abuse was available under both versions of Count II, inasmuch as the start date was not altered. In fact, Saylor made this very argument at trial. Tr. p. 820. We also note that the charges of intimidation and vicarious sexual gratification always asserted that he committed the offenses during a period of time ending in July 2006; consequently, Saylor was prepared to address the span of time covered by amended Count II. Finally, we note that Saylor did not request a continuance, which indicates the absence of substantial prejudice. Baber, 870 N.E.2d at 492-93. Under these circumstances, we find that the trial court did not err by permitting the State to amend the charging information.

II. Admission of Evidence

A. Abuse of Discretion

Saylor next contends that the trial court erred by admitting certain photographs and J.S.'s testimony into evidence. Trial courts have broad discretion in ruling on the admissibility of evidence. Turner v. State, 878 N.E.2d 286, 292 (Ind. Ct. App. 2007), trans. denied. To prevail, a defendant must show a manifest abuse of that discretion resulting in the denial of a fair trial. Johnson v. State, 785 N.E.2d 1134, 1138 (Ind. Ct. App. 2003). In reviewing the trial court's decision, we will only consider the evidence favorable to the ruling and the reasonable inferences that may be drawn therefrom. Kelley v. State, 825 N.E.2d 420, 424 (Ind. Ct. App. 2005).

1. Photographs

Photographs "'may be excluded only if [their] probative value is substantially outweighed by the danger of unfair prejudice. Ind. Evidence Rule 403[.] Even gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally.'" Schiro v. State, 888 N.E.2d 828, 841-42 (Ind. Ct. App. 2008) (quoting Corbett v. State, 764 N.E.2d 622, 626 (Ind. 2002)).

Here, forensic nurse examiner Scifres testified about her physical examination of B.D., which revealed a healed vaginal tear and hymenal thinning that was consistent with the penetration of her vagina by a blunt or round object such as a penis. To explain her findings, she referred to two photographs of B.D.'s vagina that showed the injuries. These photographs, while explicit, were neither gory nor gruesome, and were necessary

to show the jury the actual injuries sustained by B.D. We agree with Saylor that the photographs were "disturbing" and "upsetting," appellant's br. p. 18-19, but the same can be said for all of the State's evidence in any child molestation case. In addition to evidence of B.D.'s injuries, the testimony of the three children and the evidence supporting Saylor's convictions is all disturbing and upsetting because of the very nature of the crimes he committed. Child molestation is always disturbing and upsetting, and if we barred evidence proving the commission of this crime from being admitted, then offenders would never be brought to justice. The two photographs at issue herein are neither unnecessarily explicit nor overly prejudicial.

Saylor argues that the photographs had minimal probative value because B.D. admitted that she had had sexual intercourse with someone other than Saylor; thus, the injuries could have been caused by her other sexual partner. That argument, however, goes to the weight of the evidence, not its admissibility. It was for the jury to weigh the evidence of B.D.'s injuries against the competing versions of how she sustained those injuries. In sum, the photographs were relevant and not overly prejudicial; therefore, the trial court did not abuse its discretion by admitting them into evidence.

2. J.S.'s Testimony

Saylor argues that the trial court abused its discretion by permitting J.S. to testify about the sexual encounters he witnessed between B.D., M.D., and Saylor, directing our attention to Indiana Evidence Rule 404(b) in support of his argument: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes,

such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . ." Saylor contends that the only purpose of J.S.'s testimony was improper pursuant to Rule 404(b); namely, to establish that Saylor had committed uncharged acts of molestation against J.S.

The record reveals that when Saylor objected to the relevancy of J.S.'s testimony, the State explained that it was calling J.S. because Saylor had denied molesting B.D. and M.D. and J.S. had witnessed some of the molestations. The trial court permitted J.S. to testify only regarding what had transpired between Saylor, M.D., and B.D. J.S. was not asked about anything that might have occurred between him and Saylor. This testimony, therefore, was relevant because it directly refuted Saylor's claim that he had not molested B.D. and M.D. and that the children had fabricated the sexual encounters, and did not address any improper subject matter. Thus, the trial court did not abuse its discretion by permitting J.S. to testify.

B. Fundamental Error

Saylor next argues that the trial court erred by admitting B.D.'s recorded statement and testimony regarding B.D.'s sexual behavior with a dog into evidence. At trial, however, Saylor did not object to the admission of this evidence; thus, he has waived the argument on appeal. To avoid waiver, Saylor contends that the admission of the evidence constituted fundamental error. The fundamental error doctrine is extremely narrow. Rowe v. State, 867 N.E.2d 262, 266 (Ind. Ct. App. 2007). To qualify as fundamental error, an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible. Id. Furthermore, the error must be a blatant violation of basic principles, the

harm—or potential for harm—must be substantial, and the resulting error must deny the defendant fundamental due process. Id.

1. B.D.'s Recorded Statements

Saylor argues that the trial court committed fundamental error by admitting the DVD recording of B.D.'s interview with social worker Vogelgesang into evidence.[6] The DVD was offered into evidence during Vogelgesang's testimony and was later published to the jury. Tr. p. 649, 685. Saylor offered no objections, and now contends on appeal that the admission of this evidence was so prejudicial that he is entitled to a new trial because it was cumulative of B.D.'s testimony.

As noted by the State, however, Saylor's defense rested on a theory that B.D. was lying and his cross-examination of her focused on inconsistencies in her statements. The DVD, therefore, was relevant and admissible to rehabilitate her testimony. Flake v. State, 767 N.E.2d 1004, 1010 (Ind. Ct. App. 2002). Additionally, we note that the DVD contains statements that are both consistent and inconsistent with B.D.'s trial testimony and, in fact, Saylor's attorney emphasized B.D.'s statements during the videotaped interview at length during his closing argument. Tr. p. 904-05. Under these circumstances, the trial court's admission of B.D.'s recorded statements did not constitute fundamental error.

[6] B.D.'s out-of-court statements were admitted pursuant to Indiana Code section 35-37-4-6, which permits the use of out-of-court statements that would not otherwise be admissible in prosecutions for child molesting if certain conditions are met. The trial court held a hearing on the issue before trial began and ruled that the statements were admissible pursuant to that statute.

2. Testimony about Bestiality

Next, Saylor argues that the trial court committed fundamental error when it permitted two witnesses to testify about the fact that he had taught B.D. how to engage in intercourse with the family dog. He contends that this testimony is prohibited evidence of uncharged prior bad acts under Evidence Rule 404(b).

During Saylor's cross-examination of Mardello, the following discussion occurred:

> Q. Now [B.D.] also . . . she also related to you having sexual activity with a dog, didn't she?
>
> A. Yes, sir.
>
> Q. And uh . . . you indicated that there was some coaching from you with respect to getting information from her about that?
>
> A. Yes, sir.
>
> Q. Okay. And so . . . so you probed her after she brought that topic up a little bit, didn't you?
>
> A. I wouldn't say probed her. No.
>
> Q. Okay. Well, what would you say?
>
> A. I did it . . . it was for [B.D.'s] benefit, but I had her explain to me a little bit more in detail because this is a pretty serious incident, and I just wanted to know for sure that she knew what she was talking about.

Tr. p. 574-75. On redirect, the State explored the topic further:

> Q. Did [B.D.] tell you how she learned how to [have sex with the dog]?
>
> A. She said that her dad had showed her how and said it was okay.
>
> Q. Said it was okay. What do you mean by that?

A. From what I understood, he was watching her have altercations with the family dog.

***

Q. You understood what she was talking about?

A. Absolutely.

Q. And what did you understand her to mean?

A. That she had been having sex with the dog. Letting the dog have sex with her rather.

Q. And, again, was she doing this on her own or was she taught this by someone?

A. She was taught this by her father.

Id. at 578-79.

The next reference to this topic occurred when Saylor called one of his neighbors to testify that B.D. had played inappropriately with the neighbor's dog. On cross-examination, the State asked questions about the neighbor's confrontation with B.D. following the incident:

Q. Didn't [B.D.] tell you that she had learned [to behave inappropriately with dogs] from her dad?

A. Yes.

Q. That he made her have sex with the dog before?

A. Yes.

Id. at 765.

Thus, the record reveals that Saylor, not the State, brought up the topic of B.D.'s behavior with dogs with both witnesses. It is well established that "when a defendant

injects an issue into the trial, he opens the door to otherwise inadmissible evidence." Tawdul v. State, 720 N.E.2d 1211, 1217 (Ind. Ct. App. 1999). Furthermore,

> [w]hen a party touches upon a subject in direct examination, "leaving the trier of fact with a false or misleading impression of the facts related, the direct examiner may be held to have 'opened the door' to the cross examiner to explore the subject fully, even if the matter so brought out on cross examination would otherwise have been inadmissible."

Id. at 1217-18 (quoting Reeves v. Boyd & Sons, Inc., 654 N.E.2d 864, 871 (Ind. Ct. App. 1995)). It is evident that Saylor opened the door to this line of questioning by asking the witnesses about it and seeking to foster impressions that B.D.'s statement was invented by "coaching" and that B.D. was "far from normal" and had learned to engage in this behavior on her own.[7] Tr. p. 327, 575. Under these circumstances, the State was well within its rights to elicit further testimony revealing that, in fact, multiple witnesses corroborated B.D.'s statement that Saylor had taught and encouraged her to engage in bestiality. Thus, the trial court did not commit fundamental error by permitting testimony on this issue.

III. Sentencing

Finally, Saylor argues that the aggregate 138-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The

[7] In fact, Saylor's closing argument sought to reinforce this idea: "[W]hat do we know about her own mind? Well, she's a sick, young girl, and you know that's sad. It's not Mr. Saylor's fault. There are any number of reasons why a person ends up in that emotional state, having sex with dogs . . . ." Tr. p. 917-18.

burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). The sentencing range for a class A felony is twenty to fifty years imprisonment, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4. Saylor received an enhanced term of forty-five years on both of his class A felony convictions. The sentencing range for a class B felony is six to twenty years imprisonment, with an advisory sentence of ten years. I.C. § 35-50-2-5. Saylor received an enhanced term of eighteen years on his class B felony conviction. Finally, Saylor faced a habitual offender enhancement of thirty years—the advisory sentence of a class A felony. I.C. § 35-50-2-8. The trial court elected to run Saylor's sentences consecutively, for an aggregate executed term of 138 years.

As for the nature of these offenses, Saylor repeatedly and remorselessly committed brutal, sexual acts upon two of the children in his care. See French v. State, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005) (holding that the existence of multiple victims is an appropriate justification for increasing a sentence); Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005) (holding that the perpetration of serial offenses against a single victim is a valid aggravator). He repeatedly sexually violated B.D. in every room of the house as her siblings watched and listened in horror. See Burgess v. State, 854 N.E.2d 35, 41-42 (Ind. Ct. App. 2006) (holding that the mere presence of a minor living in a house where methamphetamine was being manufactured is a valid aggravator). He

forced B.D. and M.D. to engage in sexual acts with one another as he watched and/or participated. He forced B.D. to tell him she enjoyed his abuse, compared her sexually to her mother, beat and/or grounded her if she refused to engage in sexual acts, and threatened to kill her family if she sought help from others. It is difficult to imagine a series of offenses that turn one's stomach more than these, and we do not find that the nature of these offenses aids Saylor's inappropriateness argument.

As to Saylor's character, he argues that the trial court improperly used his criminal history as an aggravator and as support for the habitual offender finding. This argument, however, has already been rejected by our Supreme Court:

> [W]hen a trial court uses the same criminal history as an aggravator and as support for a habitual offender finding, it does not constitute impermissible double enhancement of the offender's sentence. Whether a sentence on the higher end of the sentencing range is appropriate under such circumstances will vary from offense to offense and from one prior criminal record to another.

Pedraza v. State, 887 N.E.2d 77, 80 (Ind. 2008). In any event, Saylor's long and substantial criminal history includes far more convictions than the two used to support the habitual offender finding, which were for operating a vehicle while intoxicated and theft. In addition to those crimes, Saylor amassed the following convictions: check deception, at least two other convictions for operating while intoxicated, being a habitual traffic violator, operating a vehicle after license was suspended, criminal recklessness, operating a motor vehicle after lifetime forfeiture of driving privileges, battery, and multiple probation violations. Saylor's criminal history reveals a person with no respect for the rule of law or the safety and well-being of his fellow citizens. Under these

circumstances, we do not find the aggregate 138-year sentence imposed by the trial court to be inappropriate in light of the nature of the offenses and Saylor's character.

The judgment of the trial court is affirmed.

MATHIAS, J., and, BROWN, J., concur.